

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

WARREN LEWIS SHOLL, III,
Petitioner,

v.

THOMAS AMMONS,
Respondent.

1:07-cr-1017-WSD-SSC

OPINION AND ORDER

This matter is before the Court on the Final Report and Recommendation of United States Magistrate Judge (“R&R”) [9], granting Respondent Thomas Ammons (“Ammons”) Motion to Dismiss [7].

With respect to portions of the R&R to which Defendant has not objected, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). Here, Petitioner has not objected to the R&R, so the Court reviews the R&R for plain error. Id.

Petitioner was convicted in the Barrow County, Georgia Superior Court for four counts of child molestation and one count of aggravated child molestation. The trial judge structured Petitioner’s sentence for all six counts such that

Petitioner would serve a total of sixty years, with twenty to be served in prison and forty on probation. Petitioner appealed his conviction on the aggravated child molestation charge, and his conviction was affirmed.

On May 3, 2007, Petitioner filed the instant habeas petition attacking his conviction for an unconstitutionally deficient lack of evidence and a void indictment.¹ On June 25, 2007, Petitioner filed a habeas petition with the state of Georgia in the Mitchell County Superior Court.

The R&R found that Petitioner had not yet received a certificate of probable cause from the Supreme Court of Georgia, demonstrating that his state habeas remedies are not exhausted, and that federal habeas was thus not appropriate. Pope v. Rich, 358 F.3d 852, 854 (11th Cir. 2004) (“Pope’s failure to apply for a certificate of probable cause to appeal the denial of his state habeas petition to the Georgia Supreme Court means that Pope has failed to exhaust all of his available state remedies.”) Having carefully reviewed the R&R, and given that Petitioner apparently has ongoing habeas proceedings in state court and did not object to the R&R, the Court finds no plain error in this conclusion.

¹ Petitioner originally asserted four counts without identifying the latter two, but eventually dropped them.

Accordingly,

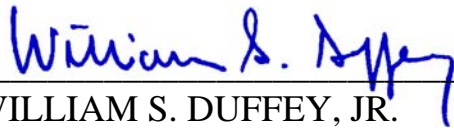
IT IS HEREBY ORDERED that the Court **ADOPTS AS ITS ORDER** the Final Report and Recommendation of United States Magistrate Judge [9].

Respondent's Motion to Dismiss [7] is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's petition [1] is **DISMISSED**.

The Clerk is directed to **CLOSE** this case.

SO ORDERED this 12th day of December, 2007.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE